

are subject to any applicable provisions in § 742.15(b) of the EAR (for mass market encryption commodities and software with symmetric key length exceeding 64-bits) or § 740.17 of the EAR (License Exception ENC), including review and reporting requirements.

(4) *Conditions for use.* Exports or reexports of beta test software programs under the provisions of this paragraph (c) must meet all of the following conditions:

(i) The software producer intends to market the software to the general public after completion of the beta testing, as described in the General Software Note (see supplement no. 2 to part 774 of the EAR) or the Cryptography Note in Category 5, Part 2 (“Information Security”) of the Commerce Control List (see Supplement No.1 to part 774 of the EAR);

(ii) The software producer provides the software to the testing consignee free-of-charge or at a price that does not exceed the cost of reproduction and distribution; and

(iii) The software is designed for installation by the end-user without further substantial support from the supplier.

(5) *Importer Statement.* Prior to exporting or reexporting any eligible software under this paragraph (c), the exporter or reexporter must obtain the following statement from the testing consignee, which may be included in a contract, non-disclosure agreement, or other document that identifies the importer, the software to be exported, the country of destination, and the testing consignee.

“We certify that this beta test software will only be used for beta testing purposes, and will not be rented, leased, sold, sub-licensed, assigned, or otherwise transferred. Further, we certify that we will not transfer or export any product, process, or service that is the direct product of the beta test software.”

(6) *Use limitations.* Only testing consignees that provide the importer statement required by paragraph (c)(5) of this section may execute any beta test software that was exported or re-exported to them under the provisions of this paragraph (c).

(7) *Return or disposal of software.* All beta test software exported must be de-

stroyed abroad or returned to the exporter within 30 days of the end of the beta test period as defined by the software producer or, if the software producer does not define a test period, within 30 days of completion of the consignee's role in the test. Among other methods, this requirement may be satisfied by a software module that will destroy the software and all its copies at or before the end of the beta test period.

(8) *Notification of beta test encryption software.* For beta test encryption software eligible under this license exception you must, by the time of export or reexport, submit the information described in paragraphs (a) through (e) of Supplement No. 6 to part 742 of the EAR by e-mail to BIS at crypt@bis.doc.gov and to the ENC Encryption Request Coordinator at enc@nsa.gov.

[61 FR 64277, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996.]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 740.9, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 740.10 License Exception Servicing and replacement of parts and equipment (RPL).

License Exception RPL authorizes exports and reexports associated with one-for-one replacement of parts, components, accessories, and attachments. License Exception RPL also authorizes exports and reexports of certain items currently “subject to the EAR” to or for, or to replace, a defense article described in an export or reexport authorization issued under the authority of the Arms Export Control Act. It does not, however, authorize the export or reexport of defense articles subject to the ITAR, i.e., described on the United States Munitions List (22 CFR 121.1).

(a) *Parts, components, accessories, and attachments—(1) Scope.* The provisions of this paragraph (a) authorize the export and reexport of one-for-one replacement parts, components, accessories, and attachments for previously exported equipment or other end items.

(2) *One-for-one replacement of parts, components, accessories, or attachments.*

(i) The terms *replacement parts*, *components*, *accessories*, or *attachments* as used in this section mean parts, components, accessories, or attachments needed for the immediate repair of equipment or other end items, including replacement of defective or worn parts or components. (These terms include ‘subassemblies,’ but do not include test instruments or operating supplies. The term ‘subassembly’ means a number of parts or components assembled to perform a specific function or functions within a commodity. One example would be printed circuit boards with components mounted thereon. This definition does not include major subsystems such as those composed of a number of ‘subassemblies.’) Items that improve or change the basic design characteristics, e.g., as to accuracy, capability, performance or productivity, of the equipment or other end item upon which they are installed, are not deemed to be replacement parts, components, accessories, or attachments. For kits consisting of replacement parts or components, consult § 740.9(a)(4) of this part.

(ii) Parts, components, accessories, and attachments may be exported only to replace, on a one-for-one basis, parts, components, accessories, or attachments, respectively, contained in commodities that were: lawfully exported from the United States; lawfully reexported; or made in a foreign country incorporating authorized U.S.-origin parts, components, accessories, or attachments. “600 series” parts, components, accessories and attachments may be exported only to replace, on a one-for-one basis, parts, components, accessories, or attachments that were: lawfully exported from the United States, or lawfully reexported. The conditions of the original U.S. authorization must not have been violated. Accordingly, the export of replacement parts, components, accessories, and attachments may be made only by the party who originally exported or reexported the commodity to be repaired, or by a party that has confirmed the existence of appropriate authority for the original transaction.

(iii) The parts, components, accessories, or attachments to be replaced must either be destroyed abroad or re-

turned promptly to the person who supplied the replacements, or to a foreign firm that is under the effective control of that person.

(3) *Exclusions to License Exception RPL.* (i) No replacement parts, components, accessories, or attachments may be exported to repair a commodity exported under a license or other authorization if that license or other authorization included a condition that any subsequent replacements may be exported only under a license.

(ii) No parts, components, accessories, or attachments may be exported to be held abroad as spares for future use. Replacements may be exported to replace spares that were authorized to accompany the export of equipment or other end items as those spares are used in the repair of the equipment or other end item. This allows maintenance of the stock of spares at a consistent level as the parts, components, accessories, or attachments are used.

(iii) No parts, components, accessories, or attachments may be exported to any destination, except the countries listed in Supplement No. 3 to part 744 of the EAR (Countries Not Subject to Certain Nuclear End Use Restrictions in § 744.2(a)), if the item is to be incorporated into or used in nuclear weapons, nuclear explosive devices, nuclear testing related to activities described in § 744.2(a) of the EAR, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 744.2(a) of the EAR.

(iv) No replacement parts, components, accessories, or attachments may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) (countries designated by the Secretary of State as supporting acts of international terrorism) if the commodity to be repaired is an “aircraft” (as defined in § 772.1 of the EAR) or is controlled for national security (NS) reasons.

(v) No replacement parts, components, accessories, or attachments may be exported to countries in Country Group E:1 (see Supplement No. 1 to this

part) if the commodity to be repaired is explosives detection equipment classified under ECCN 2A983 or related software classified under ECCN 2D983.

(vi) No replacement parts, components, accessories, or attachments may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) if the commodity to be repaired is concealed object detection equipment classified under ECCN 2A984 or related software classified under ECCN 2D984.

(vii) The conditions described in this paragraph (a)(3) relating to replacement of parts, components, accessories, or attachments do not apply to reexports to a foreign country of parts, components accessories, or attachments as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the license exceptions in this part or the exceptions in §734.4 of the EAR (*De minimis* U.S. content).

(viii) Parts, components, accessories, and attachments classified in “600 Series” ECCNs may not be exported or reexported to a destination listed in Country Group D:5 (see Supplement No. 1 to this part).

(4) *Reexports.* (i) Parts, components, accessories, and attachments exported from the United States may be reexported to a new country of destination, provided that the conditions established in paragraphs (a)(2) and (3) of this section are met. A party reexporting U.S.-origin one-for-one replacement parts, components, accessories, or attachments shall ensure that the commodities being repaired were shipped to their present location in accordance with U.S. law and continue to be lawfully used, and that either before or promptly after reexport of the replacement parts, components, accessories, or attachments, the replaced commodities and software are either destroyed or returned to the United States, or to the foreign firm in Country Group B (see Supplement No. 1 to this part) that shipped the replacement parts.

(ii) The conditions described in paragraph (a)(3) relating to replacement of parts, components, accessories, or attachments (excluding “600 series”

ECCNs) do not apply to reexports to a foreign country of parts, components, accessories, or attachments as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the foreign-origin product is not subject to the EAR pursuant to §734.4.

(b) *Servicing and replacement.* (1) *Scope.* The provisions of this paragraph (b) authorize the export and reexport to any destination, except for “600 series” items to destinations identified in Country Group D:5 (see Supplement No. 1 to this part) or otherwise prohibited under the EAR, of commodities and software that were returned to the United States for servicing and the replacement of defective or unacceptable U.S.-origin commodities and software.

(2) Commodities and software sent to a United States or foreign party for servicing.

(i) *Definition.* “Servicing” as used in this section means inspection, testing, calibration or repair, including overhaul and reconditioning. The servicing shall not have improved or changed the basic characteristics (e.g., the accuracy, capability, performance, or productivity) of the commodity or software as originally authorized for export or reexport.

(ii) *Return of serviced commodities and software.* When the serviced commodity or software is returned, it may include any replacement or rebuilt parts, components, accessories, or attachments necessary to its repair and may be accompanied by any spare parts, components, tools, accessories, attachments or other items sent with it for servicing.

(iii) *Commodities and software imported from Country Group D:1 except the People’s Republic of China (PRC).* Commodities and software legally exported or reexported to a consignee in Country Group D:1 (except the People’s Republic of China (PRC)) (see Supplement No. 1 to this part) that are sent to the United States or a foreign party for servicing may be returned to the country from which it was sent, provided that both of the following conditions are met:

(A) The exporter making the shipment is the same person or firm to whom the original license was issued; and

(B) The end use and the end user of the serviced commodities or software and other particulars of the transaction, as set forth in the application and supporting documentation that formed the basis for issuance of the license have not changed.

(iv) *Terrorist supporting countries.* No repaired commodity or software may be exported or reexported to countries in Country Group E:1 (see Supplement No. 1 to this part).

(3) Replacements for defective or unacceptable U.S.-origin equipment.

(i) Subject to the following conditions, commodities or software may be exported or reexported to replace defective or otherwise unusable (e.g., erroneously supplied) items.

(A) The commodity or software is “subject to the EAR” (see § 734.2(a) of the EAR).

(B) The commodity or software to be replaced must have been previously exported or reexported in its present form under a license or authorization granted by BIS or an authorization, e.g., a license or exemption, issued under the authority of the Arms Export Control Act.

(C) No commodity or software may be exported or reexported to replace equipment that is worn out from normal use, nor may any commodity or software be exported to be held in stock abroad as spare equipment for future use.

(D) The replacement item may not improve the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the equipment as originally authorized, e.g., under a license, license exception or an exemption, for export or reexport.

(E) No shipment may be made to countries in Country Group E:1 (see Supplement No. 1 to this part), or to any other destination to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any of those countries.

(F) Commodities or software “subject to the EAR” and classified in “600 Series” ECCNs may not be exported or re-

exported to a destination identified in Country Group D:5 (see Supplement No. 1 to this part).

(ii) *Special conditions applicable to exports to Country Group B and Country Group D:1.* In addition to the general conditions in paragraph (b)(3)(i) of this section, the following conditions apply to exports or reexports of replacements for defective or unacceptable U.S.-origin commodities or software to a destination in Country Group B or Country Group D:1 (see Supplement No. 1 to this part):

(A) By making such an export or re-export, the exporter represents that all the requirements of this paragraph (b) have been met and undertakes to destroy or return the replaced parts as provided in paragraph (b)(3)(ii)(C) of this section.

(B) The defective or otherwise unusable equipment must be replaced free of charge, except for transportation and labor charges. If exporting to the countries listed in Country Group D:1 (except the PRC), the exporter shall replace the commodity or software within the warranty period or within 12 months of its shipment to the ultimate consignee in the country of destination, whichever is shorter.

(C) The commodity or software to be replaced must either be destroyed abroad or returned to the United States, or to a foreign firm in Country Group B that is under the effective control of the exporter, or to the foreign firm that is providing the replacement part or equipment. The destruction or return must be effected before, or promptly after, the replacement item is exported from the United States.

(D) A party reexporting replacements for defective or unacceptable U.S.-origin equipment must ensure that the commodities or software being replaced were shipped to their present location in accordance with U.S. law and continue to be legally used. See § 764.7 of the EAR for exports or reexports to the installed base in Libya.

(c) *Special recordkeeping requirements: ECCNs 2A983, 2A984, 2D983 and 2D984, and “600 Series” ECCNs.* (1) In addition to the other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain

records, as specified in this section, for any items exported or reexported pursuant to License Exception RPL to repair, replace, or service previously lawfully exported or reexported items classified under ECCNs 2A983, 2A984, 2D983 and 2D984 or a “600 Series” ECCN. The following information must be maintained for each such export or reexport transaction:

- (i) A description of the item replaced, repaired or serviced;
 - (ii) The type of repair or service;
 - (iii) Certification of the destruction or return of item replaced;
 - (iv) Location of the item replaced, repaired or serviced;
 - (v) The name and address of those who received the items for replacement, repair, or service;
 - (vi) Quantity of items shipped; and
 - (vii) Country of ultimate destination.
- (2) Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR. Records that must be included in the annual or semi-annual reports of exports and re-exports of “600 Series” items under the authority of License Exception RPL are described in § 743.4 and § 762.2(b)(4), (b)(47) and (b)(48).

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§ 740.11 Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

This License Exception authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel; agencies of co-operating governments; international inspections under the Chemical Weapons Convention; and the International Space Station.

(a) *International safeguards*—(1) *Scope*. The International Atomic Energy Agency (IAEA) is an international organization that establishes and administers safeguards, including Additional Protocols, designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes. European Atomic Energy Community

(Euratom) is an international organization of European countries with headquarters in Luxembourg. Euratom establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes. This paragraph (a) authorizes exports and reexports of commodities or software to the IAEA and Euratom, and reexports by IAEA and Euratom for official international safeguard use, as follows:

(i) Commodities or software consigned to the IAEA at its headquarters in Vienna, Austria or its field offices in Toronto, Ontario, Canada or in Tokyo, Japan for official international safeguards use.

(ii) Commodities or software consigned to the Euratom Safeguards Directorate in Luxembourg, Luxembourg for official international safeguards use.

(iii) Commodities or software consigned to IAEA or Euratom may be re-exported to any country for IAEA or Euratom international safeguards use provided that IAEA or Euratom maintains control of or otherwise safeguards the commodities or software and returns the commodities or software to the locations described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section when they become obsolete, are no longer required, or are replaced.

(iv) Commodity or software shipments may be made by persons under direct contract with IAEA or Euratom, or by Department of Energy National Laboratories as directed by the Department of State or the Department of Energy.

(v) The monitoring functions of IAEA and Euratom are not subject to the restrictions on prohibited safeguarded nuclear activities described in § 744.2(a)(3) of the EAR.

(vi) When commodities or software originally consigned to IAEA or Euratom are no longer in IAEA or Euratom official safeguards use, such commodities may be disposed of by destruction or by reexport or transfer in accordance with the EAR.

(2) *Restrictions*. (i) Items on the Sensitive List (see Supplement No. 6 to